

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

RICHARD ROYBAL,

Plaintiff(s),

v.

ROBERT L. BACHMAN, ESQ., et al.,

Defendant(s).

Case No. 2:21-CV-1931 JCM (DJA)

ORDER

Presently before the court is defendants Robert L. Bachman (“Bachman”) and Debt Solutions Service, LLC’s (“DSS”) (collectively “defendants”) motion to dismiss. (ECF No. 11). Plaintiff Richard Roybal (“Richard”) filed a response (ECF No. 13), to which defendants replied (ECF No. 14).

Also before the court is Richard’s motion for leave to file a surreply (ECF No. 15), to which defendants replied (ECF No. 16).<sup>1</sup>

**I. Facts**

This matter arises out of the parties’ debt consolidation agreement. In 2019, Richard, a retired elderly person,<sup>2</sup> entered into an agreement with Bachman to reduce, compromise, modify, or eliminate his debt. (*See* ECF No. 1 at 6, 8). The agreement identifies DDS as an “outside company and independent consultant” that “will be performing the services contemplated under

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<sup>1</sup> The court DENIES Richard’s motion for a surreply. The defendants’ reply did not raise a new material issue that warranted a reply.

<sup>2</sup> As defined by Nevada Revised Statute (“NRS”) § 598.0933.

1 [the] [a]greement.” (ECF No. 1-2 at 2).<sup>3</sup> The agreement contains the following mediation  
 2 clause:

3 Mediation. If any dispute arises out of or related to this [a]greement, and if the  
 4 dispute cannot be resolved through good faith negotiation, [DDS] and [Richard]  
 5 agree to submit the dispute to non-binding mediation for no less than one, eight-  
 6 hour day, before resorting to any other dispute resolution procedure. In the event  
 of mediation, each side will bear their own attorney’s fees and costs, with each  
 side paying one-half of the mediator’s fees. The party first invoking this  
 provision will select the mediator.

7 (*Id.* at 7).

8 Richard now brings claims against defendants for charging him an advanced fee in  
 9 violation of the Credit Repair Organizations Act (“CROA”), (ECF No. 1 at 11), and charging  
 10 him more than the disclosed performance fee in violation of the Telemarketing Act, (*id.* at 15).<sup>4</sup>

11 Defendants, however, move to dismiss Richard’s complaint for failure to comply with the  
 12 agreement’s mediation clause. (*Id.* at 3).

## 13 **II. Legal Standard**

14 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief  
 15 can be granted.” FED. R. CIV. P. 12(b)(6). A properly pled complaint must provide “[a] short  
 16 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.  
 17 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not  
 18 require detailed factual allegations, it demands “more than labels and conclusions” or a  
 19 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
 20 (2009) (citation omitted).

21 “Failure to mediate a dispute pursuant to a contract that makes mediation a condition  
 22 precedent to filing a lawsuit warrants dismissal.” *Brosnan v. Dry Cleaning Station Inc.*, No. C–  
 23 08–02028, 2008 WL 2388392, at \* 1 (N.D. Cal., June 6, 2008); *see also HIM Portland, LLC v.*  
 24 *De Vito Builders, Inc.*, 317 F.3d 41, 44 (1st Cir. 2003).

25 ...

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26  
 27 <sup>3</sup> Richard extensively references the agreement in his complaint, attached it to his  
 28 complaint, and defendants do not dispute its authenticity. Therefore, the court considers its  
 contents at this dismissal stage.

<sup>4</sup> Richard also alleges nine other claims which the court need not discuss in detail.

1 **III. Discussion**

2 A. Richard's failure to comply with the agreement's mediation clause precludes his  
 3 initiation of this litigation

4 The plain language of the agreement's mediation clause provides that to the parties must  
 5 participate in non-binding mediation before resorting to any other resolution procedure. This  
 6 imposes a condition precedent to initiating litigation. Richard admits that the parties did not  
 7 participate in mediation before he filed his complaint, but argues that defendants waived the  
 8 condition by not responding to his request to begin mediation.

9 Richard argues that he sent a letter to defendants requesting clarifications about the  
 10 agreement's mediation clause on October 6, 2021, but defendants failed to respond in a timely  
 11 manner. (ECF No. 13 at 3). He then sent another letter on October 12, 2021, informing  
 12 defendants of his choice of mediator, Advanced Resolution Matters. (*Id.* at 4). Richard  
 13 demanded that defendants reply to the letter by October 15, 2021, or he would consider the  
 14 mediation condition waived. (*Id.*). Richard argues that defendants' failure to respond by that  
 15 date constitutes waiver of the mediation obligation. (*See id.*)

16 Defendants, however, argue that they responded to Richard's first letter discussing  
 17 disputed facts on October 11, 2021, and agreed to Richard's choice of mediator on October 25,  
 18 2021. (ECF No. 11 at 2).

19 Here, defendants' failure to respond by October 15, 2021, does not constitute a waiver of  
 20 their right to mediation. While not responding to a request can be considered a waiver, a two-  
 21 week delay in response does not constitute waiver merely because Richard unilaterally imposed  
 22 an arbitrary deadline to respond to his request; especially when no such requirement is contained  
 23 in the agreement.

24 The parties are bound by the agreement's terms and must complete the mediation process  
 25 before any alternative dispute resolution, including this litigation. *See, e.g., MB Am., Inc. v.*  
 26 *Alaska Pac. Leasing*, 367 P.3d 1286, 1291 (Nev. 2016). Therefore, the court dismisses  
 27 Richard's complaint as unripe.

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Accordingly,

IT IS FURTHER ORDERED that Richard's motion for a surreply (ECF No. 15) be, and the same hereby is, DENIED.

The clerk is instructed to close this case.

DATED June 27, 2022.

James C. Mahan  
UNITED STATES DISTRICT JUDGE